



THE ATTORNEY GENERAL OF TEXAS

GROVER SELLERS

~~JOHN HENRY SELLERS~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Wm. J. Lawson
Secretary of State
Austin, Texas

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Attention: Hon. Will Mann Richardson

Opinion No. O-3991

Re: May the charter of Avion Mutual
Housing Corporation be granted
under the present statutes? If
so, will the filing fee be \$10.00
and will it be exempt from the
payment of franchise tax?

Dear Sir:

This will acknowledge receipt of your request for the opinion
of this department on the hereinabove mentioned question.

In connection therewith, you submitted to us the application
for the charter, a copy of the by-laws and a letter from the Federal
Works Agency in Washington explaining certain provisions in the certifi-
cate of incorporation and in the by-laws.

We quote from your letter as follows:

"It is the contention of the incorporators
that this is a benevolent non-profit corporation
and should pay only the \$10.00 filing fee and be
exempt from franchise tax.

"This Department has contended that the
purpose is too broad for us to determine under
what subdivision of Article 1302 they are seek-
ing to incorporate. It seems probable, however,
that Subdivision 44 which allows the corporation
to establish, maintain, erect and repair a de-
partment house is the closest to the purpose of
the corporation. It is the contention of this
Department that if such a purpose is used, even
though the corporation is not organized for
profit, it must pay the \$50.00 filing fee and
the annual franchise tax.

"This Department has also objected to Ar-
ticles 7 and 8 of the charter. Article 7 provides
restrictions not authorized by the statutes on the
amendment of the charter, and Article 8 provides
for a dissolution by two-thirds of its members,
when the Texas Statutes require four-fifths.

"We would appreciate your examining these instruments and giving us an early opinion as to (1) whether this charter may be granted under the present statutes and (2) whether if such a charter is granted, the filing fee will be \$10.00 and the corporation exempt from franchise tax."

Article 1302, Vernon's Annotated Civil Statutes, enumerates the purposes for which a private corporation may be formed. The proposed charter is required, by Article 1304, Vernon's Annotated Civil Statutes, to state the purpose for which the corporation is formed. It has been held by our Supreme Court, in the case of Johnston vs. Townsend, 103 Texas 122, 124 S. W. 417, that the purpose should be stated with sufficient clearness to enable the Secretary of State to determine which of the purposes specified in Article 1302, supra, the applicants seek to incorporate under.

In the case of Smith vs. Wortham, 106 Texas 106, 157 S.W. 740, it is stated that:

"The statutory requirement that the 'purpose' of the corporation shall be stated in its charter was intended for the protection of the incorporators and stockholders, and the public, in order that they may be advised as to the character of its corporate activities, and to enable the State, through its proper officers, to collect filing fees and franchise taxes, and to supervise and control the use and to punish the non-use of its franchise." (Underscoring ours.)

In the certificate of incorporation, or application for a charter, submitted with your request letter, it is stated in the first paragraph thereof as follows:

"That we, the subscribers, of the said County of Dallas and State of Texas under the provisions of the Revised Civil Statutes of 1925 as amended by the Legislature of Texas, Title 32, Chapter 9, Article 1396 thereof and the regulatory articles succeeding said Article 1396 and contained in said Chapter 9 together with all amendments thereto, do hereby form and incorporate ourselves into a voluntary association for a Benevolent purpose, more particularly set out in Article 2 hereafter, and to that end we hereby adopt and subscribe the following:" (Underscoring ours.)

Article 1396 of the Revised Civil Statutes of Texas, 1925, Title 32, Chapter 9, reads as follows:

"Any religious society, charitable, benevolent, literary or social association (other than colleges, universities, academies or seminaries), and any military

or fire company, may, by the consent of a majority of its members become a body corporate under this title, electing directors or trustees, and performing such other things as are directed in the case of other corporations; and when so organized shall have all the powers and privileges, and be subject to all the restrictions in this title contained, for the objects named in the charter, and shall have the same power to make by-laws for the regulation of their affairs as other corporations."

Said certificate of incorporation, in Article 2 thereof, states the purpose and cause as follows:

"Article 2. Purpose and Powers. The benevolent purpose for which this Corporation is formed is to manage and operate, under appropriate agreements, in the interest of the United States of America and the members of the Corporation as occupants thereof. Defense Housing Project TEX-41091, constructed by the United States, through the Federal Works Administrator, in the town of Grand Prairie, County of Dallas, Texas, known as Avion Village, in order to provide housing for families of persons engaged in national defense activities pursuant to an act of Congress approved October 14, 1940 (54 Stat. 1125), as amended, known as the Lanham Act, and similar projects in the State of Texas for the housing of other persons, as may be agreed upon by the Corporation and the United States; to maintain, protect and safeguard the Project and Project property and secure to the Government the orderly and regular receipt of rentals, installment payments and all other charges thereon and revenues therefrom; by becoming the purchaser thereof to enable the Government to dispose of said Project and Project property as required by Section 4 of said Act of Congress, upon the termination of the present emergency as declared thereunder by the President of the United States or prior thereto, and thereby assure the continued usefulness and occupancy of the Project thereafter; to serve as the medium and means by which the residents and occupants of the Project and houses thereon, as members of the Corporation, through corporate ownership of the Project and Project property on a non-profit mutual participation plan, obtain the benefits and security of homes and permanent shelter for their families and constructive community planning under management of their own choosing in keeping with recognized standards of safety, health and wholesome living, together with such services, goods, supplies and facilities as are necessary or desirable for the operation of the homes, and in addition

thereto benefits which contribute to their general welfare including health, recreation and education, as citizens of the community. The Corporation shall have full powers to accomplish the benevolent purpose for which it is organized, and in the exercise thereof shall have each and every power granted to corporations organized under the laws of the State of Texas, and in addition thereto shall have such privileges as are extended to it by the United States of America or the laws thereof."

From the purposes expressed in the application for the charter, quoted above, it is the opinion of this department that the Avion Mutual Housing "Corporation" is neither a religious society, a charitable, benevolent, literary or social association, nor a military or fire company, within the meaning of those terms as used in Article 1396, supra, authorizing the incorporation of such societies, associations and companies under Title 32 of the Revised Civil Statutes of Texas, as amended.

In the case of State vs. Texas Mutual Life Ins. Co. of Texas, et al, 51 S. W. (2d) 405 (Reversed in 58 S. W. (2d) 37, on other grounds) the court, in speaking of the meaning of the word benevolent, used the following language:

"Broadly speaking, the word (benevolent) implies 'merely wishing well to others; beneficence; doing well.' It is a broader term than 'charity,' which it includes, and with which it is frequently used synonymously. Charity in its legal sense implies giving without consideration or expectation of return. Whereas benevolent is applied to any act which is promoted by or has for its object the well being of others." (Underscoring ours.)

In the case of Kansas Masonic Home vs. Board of Commissioners of Sedgwick County, 106 P. 1082, 81 Kan. 859, it was held that the words "benevolent" and "charitable" are nearly synonymous in meaning, and as frequently used are entirely so, especially when applied to purposes or institutions.

In the case of Kappa Gamma Rho vs. Marion County, et al, 279 P. 555, the Greek letter society, owning the lot on which its fraternity house was situated, was held not entitled to have its property exempted from taxation, as provided by statute, on the ground that it was not a "benevolent, charitable, literary or scientific society," within the meaning of such statute exempting property of such societies from taxation. The court held that "benevolent societies", as that term was used in the statute, meant societies organized with the dominant purpose of doing good to others rather than for the convenience of their own members, and did not include a fraternity which was merely beneficial to its own members.

While it appears from the application for the charter that the applicants seek to incorporate as a benevolent corporation, and refer to the "benevolent purposes for which this corporation is formed," the purpose clause, in our opinion, does not show that the purposes of said corporation are "benevolent" in the sense that said term is used in Title 32 of the Revised Civil Statutes of Texas, dealing with corporations.

From the purpose clause in the application, it is clearly shown that the objects of the corporation are primarily for the benefit of its own members, and not for the benefit or well being of others.

It is true that the purpose clause states that the purpose of the corporation is "in the interest of the United States of America." That feature alone, however, does not constitute a benevolent corporation, as contemplated by our incorporation statutes. Every corporation in Texas, benevolent or otherwise, must have a purpose that is in the interest of the United States of America, the State of Texas, and the general public, under penalty of being void and unauthorized as against public policy.

In view of the foregoing, therefore, it is the opinion of this department, under the facts stated, that the Avion Mutual Housing "Corporation" can not be incorporated under subsection 2 of Article 1302, Vernon's Annotated Civil Statutes, which provides that private corporations may be formed for "the support of any benevolent, charitable, educational or missionary undertaking."

Whether the charter applied for may be granted under the present statutes, depends on whether the purpose, as hereinabove quoted, is stated with sufficient clearness to enable the Secretary of State to determine that the purpose contemplated is one provided for by Article 1302, *supra*, and that the purposes contemplated do not embrace more than one of the subdivisions of Article 1302, *Johnston vs. Townsend, supra*.

From the facts submitted to us in connection with your request for our opinion, it is the opinion of this department that the purpose is not so clearly stated in the application for the charter as to clearly show that it is authorized under any of the present Texas incorporation statutes and that therefore the application for said charter should be refused.

In view of our answer to your first question, your other questions no longer exist.

GROVER SELLERS
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This opinion
Considered and
Approved in
Limited Conference.

Very truly yours,
ATTORNEY GENERAL OF TEXAS

By s/ Edgar Pfeil
Edgar Pfeil
Assistant

APPROVED
OPINION
COMMITTEE
BY BWB CHAIRMAN